

**DEQ – Air Quality Division  
SUMMARY OF NEGOTIATED RULEMAKING  
DAIRY PERMITTING  
DOCKET No. 58-0101-0502  
January 3, 2006**

**PARTICIPANTS**

Bauer, Martin – DEQ  
Beard, Phyllis – Amalgamated Sugar  
Eddie, Bill – Advocates for the West  
Hayes, Justin – Idaho Conservation League  
Haynes, Claudia - Canyon County  
Kronberg, Lisa – Attorney General's Office  
Louks, Bruce – DEQ  
McClure, Ken – Givens Pursley  
Naerebout, Bob – Idaho Dairymen's Association  
Olmstead, Brent – Milk Producers of Idaho  
Patten, Marv – ISDA (by telephone)  
Sheffield, Ron – University of Idaho  
Simon, Mike – DEQ  
Smith, Toy – Northwest Dairy Association  
Heitman, Phyllis – DEQ (Admin Support)

Martin Bauer called the meeting to order at 2:10 p.m., and the participants introduced themselves. Mr. Bauer spoke briefly about the schedule for this rulemaking.

Task	Date Due
Complete negotiations	By 1/27/06
Temporary rule considered by Board	2/23/06
Temporary rule published in Admin. Bulletin, with effective date designated	4/5/06
Proposed Rule published in Admin. Bulletin; comment period begins	5/3/06
Proposed rule considered by board	10/11/06

If the rule is not ready for the February, 2006 Board meeting, it can be presented to the June, 2006 meeting.

**POINT VALUE FOR PERMIT BY RULE**

Mr. Bauer asked Marv Patten to update the group on the dairy reviews and scoring he had done since the last meeting.

Mr. Patten said he reviewed the point values for the five dairies Brent Olmstead previously rated for comparison sake and additionally rated several other dairies. Mr. Patten said he agreed with the scores for the five dairies. He reminded the group he was asked to look at average or below average dairies, but he was not able to

effectively decide what criteria to use to determine what constituted an average farm. Instead he said he randomly chose 21 farms in Magic Valley, not including the five scored by Mr. Olmstead. He had a low score of 13 and a high score of 54. Of those, 9 facilities scored 22 points or below. He suggested a number for an average dairy would be approximately 25 points. All of these farms are large enough to qualify for the permitting program. He said most of these dairies are newer, more modern facilities and, in his opinion, are fairly well run. Farms fit into all three dairy types: 3 were freestall flush, 5 were freestall scrape, 3 were open lot, and the remainder was dry lot. Bill Eddie asked if credit was given for third-party export; Mr. Patten did not give credit in all cases for export. If export credit had been given, the average would have been higher. Mr. Patten estimated that of the 21 facilities, approximately 50% are exporting.

Points for each of the 21 dairies, by type, were as follows:

- Freestall flush – 22, 32, 52.5, 32, 22
- Freestall scrape/vacuum – 30, 14, 54, 47, 24
- Open lot /alley way – 31, 20, 20
- Dry lot – 27, 27, 37, 20, 20, 27, 20, 13

In response to a question from Bruce Louks asking what BMPs were used at the dry lot facility that scored 13 points, Mr. Patten said that dairy was using solids separation, composting, corral harrowing and dietary.

Ron Sheffield said average point value differs between dairy types: freestall facilities, 33 points; open lot facilities, 24 points. Mr. Louks observed that the designs between the two types are totally different and the number of control practices for the freestall facilities are much stronger than for the other types.

Mr. Bauer asked if different point values are needed for different dairy types. Mr. McClure observed that this may not be feasible since any given facility may include more than one system of practices. After discussion, the group decided multiple scores would not be practical. Mr. Bauer said he did not want the rule to force dairies to design farms based on obtaining the higher points of certain BMPs. Mr. Patten agreed having multiple point values was impractical. In response to a question from Mr. Eddie about the correlation between scores and complaints for the reviews done by Mr. Patten, Mr. Patten said he did not do a formal review of complaints. He generally knows the status of complaints for the various facilities.

If the effective date of this rule is summer 2006, Ms. Kronberg asked if those dairies scored at 13 or 14 would have sufficient time to bring their facilities up to the permitting standard by summer. Mr. Patten said they would need to change some practices but it should be achievable – he thinks that setting points at 25 would give those facilities a fair chance to bring their dairies up to standard. Mr. Bauer asked if most dairies scoring below 25 were operations that generally needed improvement while those over 25 are considered to be well-run. Mr. Patten said this is a fair assessment. However, he

added that some of the lower scored facilities are in fact well run and have few complaints.

Justin Hayes calculated the average for all scores:

- Freestall flush – 32.1
- Freestall scrape/vacuum – 33.8
- Open lot /alley way – 24
- Dry lot – 25.4

An average point value for the 26 facilities, which includes Mr. Olmstead's scores, is 28.6.

Mr. McClure said in looking at the numbers in a different way, of the 21 facilities, 10 do not currently meet the 25-point standard.

Mr. Hayes expressed concern that the group is trying to set the number at a level that allows the lower-scored facilities to easily comply with the rule. Mr. Bauer reminded the group that members did not come into this rulemaking with the thought that all dairies were going to be required to make changes in order to meet this rule. There are dairies that are operating effectively and what the group is trying to do is bring the others up to that standard. Setting the points at the average of 25, would place half the facilities below the standard and half above.

Mr. Louks observed that in the context of ammonia emissions, the lower-scored dry lot facilities may be controlling ammonia. From a technical standpoint, the rule is intended to address control of ammonia emissions. If the points are set at a level that puts all open/dry lot facilities out of compliance, even though ammonia is controlled, then the group has not done a good job.

After discussion about averages, Mr. Louks and Mr. Sheffield calculated the average to be 28.6, the median to be 27.0 and the geometric (weighted) average to be 26.6.

Mr. Bauer said that because this rule is required due to a lawsuit, the group must come to agreement on a point value. There is no science and no regulatory precedence to aid in setting the number. Mr. Patten added that more information from local and national studies regarding effectiveness of various practices will be coming in the next few years. Setting an interim value will greatly improve the situation until additional data is available. Adjustments to values can be made as information becomes available. Mr. Sheffield said his research will be completed by November, 2006; however, the national studies will not be available for approximately three years. Mr. Sheffield's study will test ammonia, hydrogen sulfide, NO<sub>x</sub>, SO<sub>x</sub> and VOCs.

Mr. Bauer suggested the group establish the point value with a commitment that members will revisit the rule annually over the next three years (December, 2006, 2007

and 2008). The review time schedule could be discussed in the guidance document, but not made a part of the rule.

Mr. Eddie asked Mr. Kronberg to read the section from the Rules for the Control of Air Pollution in Idaho pertaining to T-RACT. He offered that even though this section is somewhat vague, it might provide a regulatory basis for setting a number.

*"Section 007.12. Toxic Air Quality Reasonably Available Control Technology. An emissions standard based on the lowest emission of toxic air pollutants that a particular source is capable of meeting by the application of control technology that is reasonably available, as determined by the Department, considering technological and economic feasibility. If control technology is not feasible, the emission standard may be based on the application of a design, equipment, work practice or operational requirement, or combination thereof."*

Mr. Eddie asked for additional discussion on the merits of having separate values for each dairy type. He suggested that a hybrid value could be established for multiple-type operations. If you have a 7,000 cow flush system and a 7,000 cow dry lot you have almost 300 tons/yr of ammonia coming off the flush system. Mr. Hayes pointed out that the flush system has more BMP options but the same number of points is required as a dry lot. If you have equal size dairies and each gets his point value, the flush system is ultimately emitting more ammonia than the dry lot. Mr. Eddie asked if the highest emitting systems are able to more easily comply. Ms. Kronberg asked if the number of cows on a dairy should be considered because the large facilities would be emitting more ammonia. She wondered if they should have to satisfy higher points to keep the emissions at the same rate as smaller facilities.

Mr. Bauer pointed out that the lawsuit required that facilities emitting 100 tons/yr of ammonia must be permitted. It does not require them to reduce emissions to a certain level.

**Action Item.** Mr. Bauer suggested considering 27 points as the point value. He asked the various groups to discuss, develop pro-con arguments and be prepared to discuss the final number at the next meeting.

**Action Item.** Mr. Bauer also said he would like the group to agree to meet in December in each of the next three years to review the program, BMPs, and technologies.

## **FINAL REVIEW OF BMPs**

### **Action Items.**

Mr. Bauer asked Mr. Louks to finalize wording for the following items based on discussions at the last two meetings:

- Summertime Deep Bedding
- In-House Separation
- Direct Utilization

- Introductory language for the guidance – synopsis of how the BMP numbers were developed and the fact that points were based on a maximum of 20

Drafts of the above will be sent to the group for review and feedback prior to the next meeting. These items will not be placed on the agenda again unless specifically requested.

## **RULE REVISIONS**

### **Third Party Export**

Ms. Kronberg said she added third-party export language to the rule at Section 764: "Points may be obtained through third-party export with sufficient documentation." She said it seemed more appropriate to address this in the rule but added it could be placed in the BMP table as a footnote.

Regarding what kind of documentation is needed, at the end of the last meeting Mr. McClure said he would ask the dairymen if they would agree that documentation would be in the form of a written agreement. Mr. Bauer said the agreement did not necessarily need to be signed but that it did need to be written. He said the document must contain third-party name, site location, quantity of material received, date received, and material disposition method. That information will give DEQ a BMP point total claimed by the dairyman and lets the inspector know how points should be applied.

Mr. Bauer asked what form the documentation should take. Mr. McClure said that he proposed that if there is an oral agreement that should be sufficient subject to complaint or contrary confirmation. Mr. Bauer agrees except that the agreement cannot be oral – there must be written documentation. Mr. Olmstead added that as more and more requirements are placed on the third parties, fewer will be willing to take the manure. The dairymen do not want to be placed in the enforcement role to verify the third party is properly land applying. The few dairymen Mr. Olmstead talked to said they would be willing to fill in a standard form with basic information. Mr. Bauer said he thinks this is sufficient. He reminded everyone that the group does not want to discourage third-party export, but the practice has to be defensible to receive the points.

Mr. Eddie said he wants to make certain that the third-party documentation does not mean that DEQ is seeking inspection authority over the applier. He would like to see something in the guidance to give assurance to third parties.

**Action Item.** Mr. McClure agreed to develop a documentation form (including name, tons, date, BMP method used) to present to DEQ for review. The draft will be forwarded to the committee for review/comment prior to the next meeting. This item will not be placed on the agenda again unless specifically requested.

### **Clarification of "These Section" Phrases**

Ms. Kronberg made changes to Sections 762 and 763 that identify the sections to which reference is made.

### **Catastrophic Events.**

Rule language was added to Section 762 to address significant events, such as barns burning and cows being moved to other, unpermitted dairies. Subsection 762.03 is new.

Mr. McClure said he takes exception to the second portion of the subsection pertaining to need for Director approval prior to bringing cows on-site. He would like to have the exemption be automatic. The dairy would notify the Director about the emergency and state the additional stock would be on-site for "x-amount of time." Mr. McClure said he also had concern about the second dairy losing its automatic exemption if the situation went past the "x-amount of time." He said there is need for the Department to take action on an exemption request. Mr. Bauer said he did not envision the Department would ever deny an exemption for a valid "emergency." The guidance will need to define "emergency."

Ms. Kronberg said Section 332 of the Rules for the Control of Air Pollution in Idaho (Title V rules) provides a definition for emergency; the first portion might be usable for the dairy rule.

### **Action Item.**

Mr. Bauer asked Mr. McClure, Ms. Kronberg and Mr. Eddie to write language for Subsection 762.03. Mr. Bauer said this topic will not be discussed again, unless specifically requested.

### **Seasonal Application - Upset/Breakdown.**

Mr. McClure asked again about language for equipment breakdown. Mr. Bauer said he could agree to address this in the BMP chart, which will become part of the rule. Mr. McClure said the concept for allotting points for seasonal applications should be in the rule. Upset/breakdown could go in the guidance or as a footnote on the BMP table. Mr. Sheffield said the seasonal application and upset/breakdown could be addressed in the footnotes. Suggested text could be:

1. The ammonia and odor emission reduction effectiveness of each remedy is ~~related~~ rated numerically, with 1 being most effective and 3 the least effective, based on a practical year around implementation strategy; UD indicates that the practice is still under development.

2. Land application practices assume practice is conducted on all manure and wastewater handling; ~~points will be pro-rated to reflect actual on-site waste treatment; points can be awarded to exported material if the following components can be documented ....~~

3. Method used by inspector to determine compliance:

- |   |   |                                |
|---|---|--------------------------------|
| 1 | = | Observation by Inspector       |
| 2 | = | On-Site Recordkeeping Required |

3,4 = Deviation Reporting Required; any upset/breakdowns which are corrected in a reasonable amount of time shall not be cause for enforcement and does not constitute a loss of points

Table introduction language could say: "The following table was developed to reflect a year-around management strategy, points have already been adjusted to account for the seasonal variability." Another sentence could say these practices do not need to occur when it is not appropriate."

#### **Action Item.**

Mr. Bauer asked Mr. Louks and Mr. Sheffield to wordsmith the footnotes and present to DEQ for review by the group prior to the next meeting. This topic will not be discussed again, unless specifically requested.

#### **INCENTIVE FOR GOOD PERFORMANCE**

Mr. Eddie asked the group to also consider providing an incentive for dairies to achieve excellent performance, far in excess of the standard. The standard would be set at a very aggressive number that, if achieved, would provide a safe harbor from changes in the program for a set amount of time.

For instance, the number could be set at 60 BMP points and the dairy would be given a safe harbor from requirements to make additional improvements in the ensuing years. Mr. Eddie said that if the rule point value is set fairly low, the group should provide an incentive for dairies to operate at a maximum performance level. Mr. Sheffield observed this would be a very unique way of proposing an entirely new process. Mr. Hayes said the permitting rule will probably change each year for the next few years and point values may increase. He said as the number increases it would be unfair for dairies that made recent changes in one year to have to make additional changes in the following year.

Mr. McClure said the group can discuss among their individual groups.

#### **Action Item Due Dates.**

All re-drafted language should be sent to Phyllis Heitman on January 9, 2006 for distribution to the group on January 10, 2006.

#### **SCHEDULE FOR FUTURE MEETINGS**

The next negotiated rulemaking meeting was scheduled for January 19, 2006 from 2:00 p.m. – 5:00 p.m. at the DEQ Office Building in Boise.

Agenda will include:

- Point Value

The meeting adjourned at 4:30 p.m.